

**DEPARTMENT OF THE INTERIOR****Fish and Wildlife Service**

[FWS-R5-ES-2012-0059; 50120-1112-0000-F2]

**Draft Environmental Impact Statement and Habitat Conservation Plan; Receipt of Application for Incidental Take Permit; Beech Ridge Energy****AGENCY:** Fish and Wildlife Service, Interior.**ACTION:** Notice of availability, receipt of application.

**SUMMARY:** Pursuant to the Endangered Species Act (ESA) and the National Environmental Policy Act (NEPA), we, the U.S. Fish and Wildlife Service (Service), announce the availability of an application for an Incidental Take Permit (ITP) and the associated Habitat Conservation Plan (HCP) from Beech Ridge Energy, LLC, as well as the Service's draft Environmental Impact Statement (EIS), for public review and comment.

We provide this notice to (1) seek public comments on the proposed HCP; (2) seek public comments on the draft EIS; and (3) advise other Federal and State agencies, affected Tribes, and the public of our intent to prepare a final EIS.

**DATES:** We will accept comments received or postmarked on or before October 23, 2012. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**) must be received by 11:59 p.m. Eastern Time on the closing date.

We will consider all requests for public meetings. To accommodate scheduling of meetings and allow sufficient time to publicize them, you must contact Laura Hill no later than September 14, 2012 (see **FOR FURTHER INFORMATION CONTACT**).

**ADDRESSES:**

*Document availability:* You may obtain copies of the documents on the Internet at <http://www.regulations.gov> at Docket Number FWS-R5-ES-2012-0059, or by any of the methods described in Availability of Documents (under **SUPPLEMENTARY INFORMATION**).

*Comment submission:* You may submit written comments by one of the following methods:

- *Electronically:* Go to the Federal eRulemaking Portal: <http://www.regulations.gov>. In the Search box, enter FWS-R5-ES-2012-0059, which is the docket number for this notice. Click on the appropriate link to locate this document and submit a comment.
- *By hard copy:* Submit by U.S. mail or hand-delivery to: Public Comments

Processing, Attn: FWS-R5-ES-2012-0059; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, MS 2042-PDM; Arlington, VA 22203.

We request that you send comments by only the methods described above. We will post all information received on <http://www.regulations.gov>. This generally means that we will post any personal information you provide us (see the Public Comments section below for more information).

**FOR FURTHER INFORMATION CONTACT:** Ms. Laura Hill, Assistant Field Supervisor, West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241; telephone 304-636-6586, ext. 18.

**SUPPLEMENTARY INFORMATION:** We received an application from Beech Ridge Energy for an ITP for the operation, and maintenance of 67 existing turbines in the project area; the construction, operation and maintenance of up to 33 additional turbines and associated infrastructure in the project area; the implementation of the HCP during the life of the permit; and the decommissioning of the entire 100-turbine project and associated infrastructure at the end of its operational life. If approved, the permit would be for a 25-year period and would authorize incidental take of the endangered Indiana bat (*Myotis sodalis*) and Virginia big-eared bat (*Corynorhinus townsendii virginianus*) (covered species). A conservation program to minimize and mitigate for the impacts of the incidental take would be implemented by Beech Ridge Energy as described in the proposed Beech Ridge Wind Energy Project HCP. To comply with the NEPA (42 U.S.C. 4321 et seq.), we prepared a draft EIS that describes the proposed action and possible alternatives and analyzes the effects of alternatives on the human environment.

**Availability of Documents**

The proposed HCP and draft EIS are available on the West Virginia Field Office's Web site at: [http://www.fws.gov/westvirginiafieldoffice/beech\\_ridge\\_wind\\_power.html](http://www.fws.gov/westvirginiafieldoffice/beech_ridge_wind_power.html) or at <http://www.regulations.gov> under Docket Number FWS-R5-ES-2012-0059. Copies of the proposed HCP and draft EIS will also be available for public review during regular business hours at the West Virginia Field Office, 694 Beverly Pike, Elkins, WV 26241.

Paper copies of the proposed HCP and draft EIS may also be viewed at the following public libraries: (1) Greenbrier County Public Library, 152 Robert W. McCormick Drive, Lewisburg, WV; (2)

Kanawha County Public Library, 123 Capitol Street, Charleston, WV; and (3) Rupert Public Library, 602 Nicholas Street, Rupert, WV. Those who do not have access to the Internet or cannot visit our office or local libraries can request CD-ROM copies of the documents by telephone at 304-636-6586 or by letter to the West Virginia Field Office (see the address under **FOR FURTHER INFORMATION CONTACT**).

**Background**

Section 9 of the ESA (16 U.S.C. 1531 et seq.) and its implementing regulations prohibit the "take" of animal species listed as endangered or threatened. Take is defined under the ESA as to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed animal species, or to attempt to engage in such conduct" (16 U.S.C. 1538). However, under section 10(a) of the ESA, we may issue permits to authorize incidental take of listed species. "Incidental take" is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing incidental take permits for threatened and endangered species, respectively, are found in the Code of Federal Regulations (50 CFR 17.22; 50 CFR 17.32).

Beech Ridge Energy has been working with staff from the West Virginia Field Office since a January 2010 consent decree was signed, following a court order ruling that construction and operation of the project would violate section 9 of the ESA "unless and until [Beech Ridge Energy] obtains an ITP" for the Indiana bat. Beech Ridge Energy is now seeking a permit for the incidental take of the Covered Species for a term of 25 years. Incidental take of these bat species may occur due to injury and mortality from collision with turbine blades and towers and from barotrauma (sudden changes in air pressure near the tips of spinning blades that cause decompression of the bats' lungs). Adverse effects to suitable Indiana bat habitat may occur from forest clearing and fragmentation.

The proposed HCP was developed to address operation of 67 existing turbines, construction and operation of an additional 33 turbines, and decommissioning of all 100 turbines by the end of the permit term (covered activities). The 6,860-acre (2,744-hectare) project planning area in Greenbrier and Nicholas Counties, West Virginia, is located on private land managed primarily for timber production.

The HCP's proposed conservation strategy is designed to avoid, minimize,

and mitigate the impacts of covered activities on the covered species. The biological goals and objectives are to (1) significantly minimize mortality of all bat species consistent with the best available scientific information; (2) avoid and minimize take of covered species by implementing turbine operational protocols learned through a research and adaptive management strategy; and (3) mitigate unavoidable impacts to covered species by implementing habitat protection or restoration measures in key habitats for both species.

The HCP that Beech Ridge Energy included with its application for an ITP includes a series of conservation measures to avoid, minimize, mitigate, and monitor the effects of project construction and operation on the covered species. These measures include: (1) Constructing fewer turbines; (2) relocating turbines greater distances from bat hibernacula; (3) reducing risk to bats when they are active at low wind speeds by raising turbine cut-in speeds (the wind speed at which turbines begin generating electricity) during bat fall migration; (4) further reducing risk to bats by fully feathering turbine blades so that they barely move at wind speeds below the cut-in speed; (5) implementing turbine feathering and cut-in speed research to determine effectiveness of the changes in operational protocols; (6) monitoring bat mortality for the life of the project to ensure that biological goals are being met and that take limits are not exceeded; and (7) implementing off-site conservation projects designed to benefit the covered species by protecting and managing key habitats in perpetuity.

The proposed action consists of the issuance of an ITP and implementation of the proposed HCP. Beech Ridge Energy considered four alternatives to the proposed action in its HCP: No action (no ITP); alternate project locations; alternate technologies (such as coal and natural gas) to generate electricity; and reduced conservation measures.

Beech Ridge Energy has developed an implementation agreement (IA) that ensures proper implementation of each of the terms and conditions of the HCP and describes the applicable remedies and recourse should any party fail to perform its obligations, responsibilities, and tasks, as set forth in the agreement. The IA is being included as an appendix to the proposed HCP for public review.

#### National Environmental Policy Act

We formally initiated an environmental review of the project

through publication of a notice of intent to prepare an EIS in the **Federal Register** on July 22, 2010 (75 FR 42767). That notice also announced a public scoping period, during which we invited interested parties to provide written comments expressing their issues or concerns related to the proposal and to attend a public scoping meeting held in Rupert, West Virginia.

Based on public scoping comments, we have prepared a draft EIS for the proposed action and have made it available for public inspection (see **ADDRESSES**). NEPA requires that a range of reasonable alternatives to the proposed action be described. The draft EIS analyzes four alternatives, which were derived in response to scoping comments on alternatives and from discussions with Beech Ridge Energy during the development of the HCP. The alternatives are as follows:

Alternative 1: No action; do not issue a permit; status quo;

Alternative 2: The proposed Federal action of issuance of the associated ITP and implementation of the proposed HCP for 100 turbines and two covered species;

Alternative 3: Issuance of an ITP and implementation of an HCP for 100 turbines and 5 covered species; and

Alternative 4: Issuance of an ITP and implementation of an HCP for 67 turbines and 2 covered species.

We are seeking public input on the draft EIS to determine whether we reviewed an appropriate list of reasonable alternatives, whether there are additional alternatives that we should consider, there is additional information that could better inform the EIS, and whether we appropriately anticipated the environmental effects of the various alternatives.

#### Public Meetings

We will consider all requests for public meetings. To accommodate scheduling of meetings and allow sufficient time to publicize them, all requests for meetings must be received within 21 days after publication of this notice (see **DATES**, **ADDRESSES**, and **FOR FURTHER INFORMATION CONTACT**). Please indicate the reasons why a meeting is desired (desired outcomes), desired format of the meeting, who is requesting the meeting (an individual, group, or groups) and desired meeting location(s).

#### Next Steps

We will evaluate the permit application, associated documents, and public comments in reaching a final decision on whether the application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). The

HCP and EIS may change in response to public comments. We will prepare responses to public comments and publish a notice of availability of the final HCP and final EIS. We also will evaluate whether issuance of a section 10(a)(1)(B) permit would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether to issue a permit. If the requirements are met, we will issue the permit to the applicant. We will issue a record of decision and issue or deny the permit no sooner than 30 days after publication of the notice of availability of the final EIS.

#### Public Comments

The Service invites the public to comment on the proposed HCP and draft EIS during a 60-day public comment period (see **DATES**). You may submit comments by one of the methods shown under **ADDRESSES**.

#### Public Availability of Comments

We will post all public comments and information received electronically or via hardcopy on <http://regulations.gov>. All comments received, including names and addresses, will become part of the administrative record and will be available to the public. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—will be publicly available. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so.

#### Authority

This notice is provided pursuant to section 10(c) of the ESA (16 U.S.C. 1531 *et seq.*) and NEPA regulations (40 CFR 1506.6).

Dated: July 30, 2012.

**Spencer Simon,**

*Acting Assistant Regional Director, Northeast Region.*

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